

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

In re POLYURETHANE FOAM ANTITRUST
LITIGATION

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) MDL Docket No. 2196
) Index No. 10-MD-2196 (JZ)

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) This document relates to:

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) ALL CASES
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**DEFENDANTS' MOTION TO VACATE AND SET ASIDE
RULE 41(a)(1) NOTICES OF VOLUNTARY DISMISSAL AND FOR OTHER RELIEF**

Defendants Carpenter Co. (sued as The Carpenter Company), Carpenter Canada Co., Carpenter Holdings, Inc., Domfoam International, Inc., E.R. Carpenter, L.P., Flexible Foam Products, Inc., Future Foam, Inc., FXI - Foamex Innovations, Inc., Hickory Springs Manufacturing Company, Mohawk Industries, Inc., Ohio Decorative Products, Inc., Valle Foam Industries (1995) Inc., Woodbridge Foam Corporation, Woodbridge Foam Fabricating, Inc., and Woodbridge Sales and Engineering, Inc. (collectively, "Defendants"),¹ by counsel, for the reasons set forth in the accompanying memorandum of law, hereby move for an order that (1)

¹ Defendants Inoac USA Inc., Crest Foam Industries, Inc., Plastomer Corporation, and Otto Bock Polyurethane Technologies, Inc. were not named as Defendants in any of the actions that have been voluntarily dismissed to date. However, they do not oppose the present Motion.

vacates and sets aside the notices of voluntary dismissal without prejudice, which were filed in a number of the consolidated cases in this MDL;² (2) re-instates those cases to the Court's docket as part of MDL 2196; and (3) modifies the current Case Management Order (A) to preclude any further voluntary dismissals without prejudice pursuant to Fed. R. Civ. P. 41(a)(1) without prior leave of Court or consent of Defendants, and (B) to condition any voluntary dismissal, whether with or without prejudice, on proper terms under Fed. R. Civ. P. 41(a)(2), including that dismissed Plaintiffs will be treated as parties for purposes of discovery.

In the alternative, should the Court be inclined to honor the voluntary dismissals, Defendants respectfully request that the Court deem each dismissal to be *with prejudice*.

² The cases in which such notices have been filed are: *Johs, et al. v. Hickory Springs Mfg. Co., et al.*, 1:11-pf-10003 (Dkt. # 118, 132) (notice filed May 4, 2011; ordered May 9, 2011); *Custom Carpets, Inc. v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10034 (Dkt. # 148); *W. Carpet Ctr., Inc. v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10035 (Dkt. # 149); *Pandolfi House of Carpets, Inc. v. Vitafoam, Inc., et al.*, 1:10-pf-10020 (Dkt. # 152) (notice filed on behalf of Pandolfi House of Carpets but designated as applicable to all actions); *Lackey, et al. v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10021 (Dkt. # 153); *DeSitter Flooring, Inc. v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10032 (Dkt. # 154); *HVA Bros., Inc., et al. v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10028 (Dkt. # 155); *Columbia River Floor Covering v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10033 (Dkt. # 156); *Foam Empire, Inc. v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10024 (Dkt. # 157); *Atl. Feather & Foam, Inc. v. Scottdel, Inc., et al.*, 3:10-pf-10001 (Dkt. # 159); *Abdinoor's Carpet Craft v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10015 (Dkt. # 162); *Alyanna Enters., Inc. v. Hickory Springs Mfg. Co., et al.*, 3:10-pf-10002 (Dkt. # 163); *R & W Carpets, Inc. v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10037 (Dkt. # 164); *Jamestown Mattress Co., Inc. v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10009 (Dkt. # 166); *Piazza's Carpet & Tile Shop, Inc. v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10008 (Dkt. # 167).

June 28, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2011, a copy of the foregoing Defendants' Motion to Vacate and Set Aside Rule 41(a)(1) Notices of Voluntary Dismissal and for Other Relief was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

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